# Petition

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**81-1518**
NO.

# In the Supreme Court of the United States

OCTOBER TERM, 1981

JOHN M. HAYDEL, JR.,

Petitioner

VERSUS

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITON FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

Is the Wagering Tax (26 U.S.C. §4403 et seq.) statutory scheme so inherently and pervasively coercive that any seizure of documents required to be produced and maintained pursuant thereto is unreasonable under the Fourth Amendment and their subsequent evidentiary use trenches on the Fifth Amendment's protection against self-incrimination?

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No.

JOHN M. HAYDEL, JR.,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-titled case on December 17, 1981.

## CITATION TO OPINIONS BELOW

The opinions of the United States Court of Appeals for the Fifth Circuit in this case are cited as *United States v. Haydel*, 649 F.2d 1152 (5th Cir. 1981), Petition for Panel Rehearing and Suggestion

for Rehearing En Banc, as corrected, denied, 5 Cir. No. 80-3254, _____F.2d _____ (Dec. 17, 1981), set out as Appendix "A" and "B".

## JURISDICTION

The judgment of the Court of Appeals was entered on July 8, 1981. The Petition for Rehearing and Suggestion for Rehearing En Banc were denied on December 17, 1981. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254 (1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States, in pertinent part, provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

The Fifth Amendment to the Contstitution of the United States, in pertinent part, provides:

> "No person. . .shall be compelled in any criminal case to be a witness against himself . . ."

## STATEMENT OF THE CASE

The Petitioner was indicted on two counts of illegal gambling, 18 U.S.C. §371 and §1955, and nine counts of filing wagering exercise tax returns which materially underreported his gross wagering income for purposes of the wagering excise tax, 26 U.S.C. §7206 (1). Before trial, he challenged, under the Fourth and Fifth Amendments, the seizure and admissiblity of the gambling records seized during the execution of a search warrant seeking evidence of illegal gambling activities. The district judge held that the records were inadmissible to prove a violation of the gambling laws, and issued an order suppressing their use in connection with the gambling counts, I and II. 486 F. Supp. 109 (M.D. La.). These two counts were subsequently dismissed.

Pursuant to a pretrial agreement, five of the remaining counts were dismissed. The Petitioner stipulated that his trial on four counts would be to the court on the stipulated testimony of five U.S. Special Agents and certain exhibits listed on a stipulated exhibit list, subject to the objections previously raised on the motion to suppress. Sitting without a jury, the district court found that the Petitioner had made a material understatement of his wagering income on

his monthly wagering excise tax returns and that he was guilty of all four counts of violating 26 U.S.C. §7206 (1). He was sentenced to one year on the first count and five years of probation on the remaining three counts.

## REASONS FOR GRANTING THE WRIT

*The decision below is in direct and irreconcilable conflict with this Court's decision in Boyd v. United States, 116 U.S. 616.*

*The issue involved is beyond the academic or episodic, since it involves any and all bookmakers registered with the Internal Revenue Service pursuant to 26 U.S.C.* §4412.

All of the evidence which led to Haydel's doom consisted of his gambling records———records he was compelled to prepare, maintain and keep available for I.R.S. examination and inspection under 26 U.S.C. §4423. The records were seized by the F.B.I. during the execution of a search for evidence of a violation of 18 U.S.C. §1955. Instead, they were used to prove the tax violations.

## THE SEIZURE AND USE OF HAYDEL'S GAMBLING RECORDS VIOLATED HIS FOURTH AND FIFTH AMENDMENT RIGHTS

In *Boyd v. United States,* 116 U.S. 616, this Court held all government attempts to obtain a person's private papers unconstitutional under both the reasonableness clause of the Fourth and the self-incrimination clause of the Fifth Amendments. In the context of the compelled production of private papers, said Jı stice Bradley, there is such an "intimate relationship" between the Fourth's "reasonableness" requirement and the Fifth's condemnation of "compelling a man to be a witness against himself" (*Boyd* at 633) that they "almost run into each other." *Boyd* at 630.

Notwithstanding *Boyd's* absolute language, this Court has never provided the breadth of protection that a literal reading seemed to require, and this Court has steadily limited its application, though not always in a manner inconsistent with its underlying principles.

*In Fisher v. United States,* 425 U.S. 391, this Court held that an accountant's work papers concerning a taxpayer's income tax liability, could be obtained from the taxpayer pursuant to an I.R.S. summons

without violating the taxpayer's Fifth Amendment privilege. Although noting that the papers were not the taxpayer's "private papers", which was enough to resolve the case, this Court went on to state that, absent any physcial compulsion of the taxpayer, no Fifth Amendment privilege issue was present. Id. at 405-14. By shifting its focus from the non-private nature of the documents seized to the physcial acts which accompanied the production of the documents, this Court, in effect, laid the foundation for *Andresen v. Maryland*, 427 U.S. 463.

*Andresen* focused on three distinct points in time at which compulsion foisted on the accused would have allowed him to invoke the Fifth Amendment. Examining these points, this Court pointed out that at the time the documents came into existence, the accused "*voluntarily* committed (them) to writing", 427 at 473 [emphasis added]. During the period of actual search and seizure, the documents were discovered solely by the efforts of the law enforcement agents. *Id.* Finally, the accused was not asked to help or to supply information, and he was not compelled to take any affirmative act that would incriminate him. At trial, production of the documents and authentication of the accused's handwriting were

done by the prosecution. At no time, from the recording of the document to the conviction, was the accused ever compelled to do any affirmative act to incriminate himself.

The present Wagering Tax statutory scheme[1] is an inter-related system for taxing wagers. It imposes upon a highly suspect and select group---bookmakers---an excise tax on the gross amount of wagers they accept. It imposes an occupational tax upon the bookmaker and upon those who receive wagers on his behalf. There are ancillary provisions calculated to assure collection of the tax. Those liable for the tax *must* register each year with the District Director of their local Internal Revenue district. Registrants *must* post revenue stamps which denote payment of the occupational tax "conspicuously" in their principal place of business, or, if they lack such place, to keep the stamps on their persons, and to exhibit them upon demand to any Treasury officer. They *must* submit a form upon which they *must* provide their residence and business address. They *must* indicate whether they are engaged in the business of accepting wagers. They *must* list the names and addresses of

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1. In 1974, in response to this Court's decisions in *Marchetti v. United States*, 390 U.S. 39 and *Grosso v. United States*, 390 U.S. 62, Congress enacted the present Wagering Tax statutory scheme. 26 U.S.C. §4403 et seq.

their employees. They *must* preserve daily records indicating the gross amount of wagers as to which they are liable to taxation, and must permit inspection of their books of account. 26 U.S.C. §§4403, 4423.

In short, a group inherently suspect of criminal activity "under penalty of sanction," *Andresen* at 476, *must produce and preserve* private papers which, if seized, can lead to the jail-house door. Nothing is plainer than that the admission of such records into evidence after seizure[2] does "convert our accusatorial system of justice into an inquistorial system." *Idem.*

There can be no doubt that under this statutory scheme the Petitoner was compelled to record his transactions or go to jail. To bookmakers with ears to hear the Hobsonian theme is clear: If you don't obey the statute, you're going to jail; if you do obey, you may still go to jail.

Is this not the "cruel [d]ilemma" condemned in *Murphy v. Waterfront Commission of New York*, 378 U.S. 52, 55?

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2. Cf. *Garner v. United States*, 424 U.S. 648.

This, then, is plainly a case where the Petitioner has been under compulsion from the very beginning until his departure for the Federal Penitentiary.

## CONCLUSION

For the above-mentioned reasons, a Writ of Certiorari should issue to review the judgment of the Fifth Circuit Court of Appeals.

Respectfully submitted,

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February 10, 1982

## CERTIFICATE OF SERVICE

This is to certify that copies of the Petiton for Writ of Certiorari have been served upon the United States of America by placing three copies thereof in the United States Mail, postage prepaid, addressed to The Honorable Wade H. McCree, Jr., Solicitor General, Department of Justice, Washington, D.C. 20530, and by placing three copies thereof in the United States Mail, postage prepaid, addressed to the Honorable C. Michael Hill, Assistant United States Attorney for the Middle District of Louisiana, 352 Florida Blvd, Baton Rouge, Louisiana 70801. I further certify that all parties required to be served have been served.

New Orleans, Lousiana, this 11th day of February, 1982.

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# Appendix

Appendix A

UNITED STATES of America
Plaintiff-Appellee,

v.

John M. HAYDEL, Jr., a/k/a "Ice Cream"
and "Mugsy"
Defendant-Appellant.
No. 80-3254.

United States Court of Appeals,
Fifth Circuit
Unit A

July 8, 1981.

The United States District Court for the Middle District of Louisiana, 486 F. Supp. 109, John V. Parker, Chief Judge, convicted defendant of materially underreporting his gross wagering income, and defendant appealed. The Court of Appeals, Alvin B. Rubin, Circuit Judge, held that: (1) defendant had legitimate expectation of privacy with respect to records secreted in his parents' home and under their bed; (2) search warrant sufficiently described premises

to be searched; (3) seizure and introduction of gambling records did not violate Fifth Amendment's guarantee against compulsory self-incrimination; and (4) fact that suspected offenses listed in search warrant were gambling, not tax, related did not preclude admission of evidence seized.

Affirmed.

1. Searches and Seizures 7(10)

Defendant had legitimate expectation of privacy with respect to records secreted in his parents' home and under their bed, where defendant's parents had given him permission to use their home and had given him a key, his access was for all practical purposes unencumbered, he conducted significant portion of his gambling activities at the home and owned records that were seized, and it was reasonable to assume that defendant had authority to exclude persons other than his parents and their guests from the home and defendant exhibited subjective expectation that contents of box stored under bed were to remain private. U.S.C.A. Const. Amend. 4.

2. Searches and Seizures 7(10)

Factors to be considered in determining

whether defendant had legitimate expectation of privacy include whether defendant had possessory interest in things seized or place searched, whether he had right to exclude others from that place, whether he exhibited subjective expectation that it would remain free from governmental invasion, whether he took normal precautions to maintain his privacy, and whether he was legitimately on the premises. U.S.C.A. Const. Amend. 4.

3. Searches and Seizures 3.7

Search warrant sufficiently described premises to be searched, despite discrepancy between municipal address of defendant's parents' home, which was searched, and address listed on face of the search warrant, where home was located in building which contained three commercial establishments and could be entered by passage through either ice-cream store or barbershop, where affidavit recounted numerous instances of defendant and his associates entering building through address stated in warrant, and where testimony indicated that defendant's family and their guests routinely entered residence through commercial establishments and interior door. U.S.C.A. Const. Amend. 4.

4. Criminal Law 394.5(4)

Burden of proof in a motion to suppress is on the petitioner. U.S.C.A. Const. Amend.4.

5. Searches and Seizures 3.7

Information contained in affidavit could be considered to elucidate search warrant, where affidavit appeared in the record with the warrant each time warrant itself appeared, testimony concerning how search was made demonstrated that officers knew that they were looking for residence of defendant's parents rather than commercial establishment at address stated in search warrant and, presumably, had defendant asked to see warrant to ascertain officers' authority he would have been shown warrant and affidavit together. U.S.C.A. Const. Amend. 4

6. Searches and Seizures 3.7

Search warrant's description of place to be searched need not meet technical requirements nor have the specificity sought by conveyancers; it need only describe place to be searched with sufficient particularity to direct searcher, to confine his examination to place described, and to advise those being searched of his authority. U.S.C.A. Const. Amend. 4.

7. Criminal Law 393(1)

Gambling records were not seized in violation of self-incrimination clause of Fifth Amendment, where defendant was charged with violating wagering tax law, statute required him to keep records and provided that books of account for any person liable for tax may be examined and inspected as frequently as necessary to aid in the enforcement of the tax on wagering, and what was seized was no more than what the law required defendant to maintain. 26 U.S.C.A. §§4403, 4412, 4423, 6001; U.S.C.A. Const. Amend. 5.

8. Witnesses 298

Requirement that taxpayers keep records does not contravene Fifth Amendment. U.S.C.A. Const. Amend. 5.

9. Witnesses 297(1)

To properly claim privilege against self-incrimination, taxpayer must have real basis to feel that his answers would subject him to criminal prosecution. U.S.C.A. Const. Amend. 5

10. Witnesses 298½

Once income tax return is filed without claiming Fifth Amendment privilege, taxpayer may not later claim that information contained in the return was compelled. U.S.C.A. Const. Amend.5.

11. Criminal Law 394.4(14)

Fact that only suspected offenses listed in search warrant were gambling, not tax, related did not preclude admission of gambling records in prosecution for violating wagering tax statute. 26 U.S.C.A. § evidence seized pursuant to search warrant issued for one offense may be used at a trial for another crime.

7206(1).

12. Criminal Law 394.4(14)

Use of fruits of a search supported by valid warrant is not confined to offense giving probable cause; evidence seized pursuant to search warrant issued for one offense may be used at a trial for another crime.

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Virgil M. Wheeler, Jr., New Orleans, La., Herber Shafer, Atlanta, Ga., for defendant-appellant.

C. Michael Hill, Asst. U.S. Atty., Baton Rouge, La., for plaintiff-appellee.

Appeal from the United States District Court for the Middle District of Louisiana.

Before SKELTON*, Senior Judge, and RUBIN and REAVLEY, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

The validity of John Haydel's conviction for materially underreporting his gross wagering income for purposes of the wagering excise tax, in violation of26 U.S.C. § 7206(1), turns on the constitutionality of the government's seizure of his gambling records, for it was primarily by their introduction that he was convicted. The seizure is challenged as having been made beyond the premises described on the warrant and as violating Haydel's rights against self-incrimination. Because we find that the search and seizure met constitutional requirements, we affirm the conviction.

Haydel, a bookmarker registered with the Internal Revenue Service, *see* 26 U.S.C. § 4412, was the subject of an investigation by the Federal Bureau of Investigation and the Internal Revenue Service. During the course of the investigation, the government obtained a search warrant authorizing the search of

*Former Fifth Circuit case, Section 9(1) of Public Law 96-452—October 14, 1980.

the premises known as 4765 McClelland Drive, Baton Rouge, Louisiana. The object of the search was the seizure of Haydel's gambling records, including accounting, tabulation and "run-down" sheets, ledgers, betting slips and line sheets.

On the day the warrant was executed, the government agents first entered an ice cream store, which bears the municipal address 4769 McClelland Drive, through its side entrance located on Byron Street.[1] The side entrance bore no separate address. They asked for the Haydel residence, and were led through the kitchen and storage areas of the store to an interior entrance to the residence. They thus reached the residence through the entrance that was accesible from McClelland Drive rather than through Byron Street door that led directly into the residence. During their subsequent search of the residence, the agents discovered the gambling records sought to be suppressed in a cardboard box located under the bed of the defendant's parents.

Haydel was indicted on two counts of illegal gambling, 18 U.S.C. §§371 and 1955, and nine counts of filing tax returns that falsely reported material matters, 26U.S.C. 7206(1). Before trial, he challenged, under both the fourth and fifth amendments, the ad-

missibility of gambling records discovered in his parents' bedroom. Finding that the search warrant identified the premises to be searched sufficiently to withstand fourth amendment challenge, the district court denied in part the motion to suppress. The district judge, however agreed that, under the fifth amendment, the records were inadmissible to prove violation of the gamblng laws, *see* also 26 U.S.C. §4424(c), and issued an order suppressing their use in connection with such a trial. 486 F. Supp. 109 (M.D. La. 1980). Those two counts were subsequently dismissed.

Pursuant to a pretrial agreement, five of the remaining counts were dismissed and Haydel stipulated that he had understated his gross wagers by reporting, on Internal Revenue Service Form 730, less than 10 percent of the gross wagers he had accepted in his bookmaking activity. Sitting without a jury, the district court found that such an understatement was "material" and that Haydel was guilty of all four counts of violating the applicable tax statute, 26 U.S.C. § 7206(1). Haydel was sentenced to one year on the first count and five years of probation on the remaining three counts.

I.

[1] Haydel first claims that the gambling records were seized in violation of the fourth amendment because the warrant insufficiently described the premises to be searched. Pausing at the threshold, as the agents are charged with wrongfully failing to do, we must first determine whether Haydel had a legitimate expectation of privacy for records secreted in his parents' home and under their bed. *Rakas v. Illnois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978). The government has sought unsuccessfully to persuade us that Haydel could not reasonably expect that only he and those who had his consent would gain access to what was there concealed. We reject this narrow confinement to confidentiality.

* * * * * * * * *

III.

[7] Haydel next contends that the gambling records were seized in violation of the self-incrimination clause of the fifth amendment. Citing the seminal decision of *Andresen v. Maryland*, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976), he argues that, because the wagering tax statute compels gamblers to maintain certain records under

threat of statuory penalty, the seizure and subsequent introduction of these records violate the fifth amendment's guarantee against compulsory self-incrimination.

The Court in *Andresen* held that seizure of a person's papers did not violate the fifth amendment because the government's taking of pieces of paper did not compel their owner to incriminate himself.[11] It drew a distinction between papers secured by means of a subpeona, which requires the individual to supply the incriminating information, and a search, where the government takes the initiative, and asks nothing of the owner, save to stand aside while it seizes a physical object. In drawing this distinction, however, the Court seemed to stress the fact that Andreson had voluntarily committed his thoughts to paper. Haydel, therefore, seeks to rely upon intimations drawn from this mode of explaining the *Andreson* decision, by emphasizing that he did nothing voluntarily. He was required by statute both to file wagering returns and reports and to maintain certain records necesary to prepare the reports. 26 U.S.C. §§4403, 4412 and 6001.

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11. *See generally* The Supreme Court, 1975 Term, 90 Harv.L.Rev. 56, 76-78 (1976); Note, Formalism Legal Realism and Constitutionality Protected Privacy Under the Fourth and Fifth Amendments, 90 Harv.L.Rev. 945 (1976).

If Haydel had been charged with violating a gambling statute instead of the wagering tax law, the issue would be whether the statutory requirement that he file wager returns compelled him to record information that incriminated him for another crime. He was, however, charged only with the tax offense. The statute requires him to keep records and provides that the "books of account of any person liable for tax . . . may be examined and inspected as frequently as necessary" to aid in the enforcement of the tax on wagering. 26 U.S.C. § 4423. What was seized was no more than what the law required Haydel to maintain. Therefore, his claim is, at bottom, that the requirements of Section 4423 contravene the fifth amendment.

When the question is directly considered, the answer is quickly found. The Supreme Court in 1968 held unconstitutional, against a fifth amendment challenge, the predecessor to the current tax on wagering. *Grosso v. United States*, 390 U.S. 62, 88 S.Ct. 709, 19 L.Ed.2d 906 (1968); *Marchetti v. United States*, 390 U.S. 39, 45, 88 S.Ct. 697, 701, 19 L.Ed.2d 889 (1968). In reaching that conclusion, the Court emphasized that the information contained in the returns and reports filed by the gambler under the wagering

statute was routinely made available to law enforcement officials for use in prosecuting violations of anti-gambling statutes. The Court concluded, therefore, that the record keeping and reporting requirements of act consituted compulsory self-incrimination in violation of the fifth amendment. The government's power to tax illegal activities, however, was explicity approved. *Id.* at 44, 88 S.Ct. at 700, 19 L.Ed.2d at 895. *See also License Tax Cases*, 72 U.S. (5 Wall.) 462, 18 L.Ed.497 (1866).

In response to these decisions, Congress amended the statute to prohibit disclosure of any information derived from wagering tax returns except to enforce the provisions of the wagering tax statutes. 26 U.S.C. § 4424.[12] Moreover, the statute forbids the use of information derived from the returns or records in any criminal proceeding "except in connection with the administration or civil or criminal enforcement of" the wagering tax statutes. 26 U.S.C. §4424(c). We have held that the registration and filing requirements of the statute, thus limited, are constitutional and that gamblers, such as Haydel, are not

12. *See* H.R. Rep.No. 1401, 93d Cong., 2d Sess. 5-6 (Conf.Com.), *reprinted in [1974] U.S. Code Cong. & Ad.News 6228, 6232, 6233. See also* Blakely & Kurland, Development of the Federal Law of Gambling, 83 Cornell L.Rev. 923, 994-1010 (1978).

privileged to refrain from filing the necessary documents. *United States v. Jeffers*, 621 F.2d 221 (5th Cir. 1980). *See also United States v. Stavros*, 597 F.2d 108(7th Cir. 1979); *United States v. Sahadi*, 555 F.2d 23 (2d Cir. 1977); *United States v. O'Brien*, 420 F. Supp. 834 (D.Conn.), *aff'd* 555 F.2d 136 (2d Cir. 1976).

[8-10] It would, of course be impracticable, if not impossible, to tax wagering income without requiring the returns. Filing false returns can later incriminate the gambler-taxpayer, but filing false income tax returns also incriminates an income taxpayer, and the requirement that taxpayers keep records does not contravene the fifth amendment.[13] *See, e.g., United States v. Edelson*, 604 F.2d 232 (3d Cir. 1979). Therefore, accepting the premises that the

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13. There can, of course, be valid claims of privilege to refuse to answer questions on a tax return. Properly to claim this privilege, a taxpayer must have a real basis to fear that his answers would subject him to criminal prosecution. *See United States v. Sullivan*, 274 U.S. 259, 47 S.Ct. 607, 71 L.Ed 1037 (1927). Once a return is filed without claiming the fifth amendment privilege, however, the taxpayer may not later claim that the information contained in the return was compelled. *Garner v. United States, 424 U.S. 648, 96 S.Ct. 1178, 47 L.Ed.2d 370 (1976).*

*Haydel did not claim a privilege when he registered or at the time he filed the returns. Cf. Garner v. United States,* 424 U.S. 648, 96 S.Ct. 1178, 47 L.Ed.2d 370 (1976).

government has the power to tax wagering income and that the current statutes does not violate the fifth amendment by requiring returns in the first instance, we hold that the records are not, as urged by Haydel, absolutely immune from seizure, and that they could be validly introduced in a prosecution for falsely filing those returns.[14] They were, therefore, not improperly admitted by the district court.[15].

## IV.

[11,12] Haydel's fallback proposition is that the

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14. The statute provides that the records may be "examined and inspected." 26 U.S.C. § 4423. It does not specify, however, the manner in which this inspection is to occur. Our holding is limited to the situation in which the records were obtained by means of a warrant rather than in some other fashion.

15. We intimate no opinion concerning whether a gambler would be unable to claim his privilege against compulsory self-incrimination if the information "compelled" by the gambling tax return were introduced in a criminal prosecution for illegal gambling. *See Garner v. United States*, 424 U.S. 648, 660 n.14, 96 S.Ct. 1178, 1185 n.14, 47 L.Ed.2d 370, 381 n.14 (1976). *Cf. Andresen v. Maryland*, 427 U.S. 463, 474-75, 96 S.Ct. 2737, 2745, 49 L.Ed.2d 627 (1976) (the Court noted that a result contrary to the one reached "would bar the admission of an accused's gambling records in a prosecution for gambling"). Here, as we have mentioned, the district court upheld Haydel's fifth amendment challenge with respect to the gambling counts of the indictment and the issue is not before us.

records were inadmissible in the tax trial because the only suspected offenses listed in the warrant were gambling, not tax, related. This contention is meritless. Use of the fruits of a search supported by a valid warrant is not confined to the offense giving probable cause. Evidence seized pursuant to a warrant issued for one offense may be used at a trial for another crime. *See, e.g., United States v. Hanon*, 428 F.2d 101 (8th Cir. 1970), *United States v. Scaglione*, 446 F.2d 182 (5th Cir. 1971), *United States v. Kane*, 450 F.2d 77 (5th Cir. 1971). If probable cause exists and a warrant is secured, the constitution does not limit the uses of relevant evidence.

Accordingly, the convictions are AFFIRMED.

# APPENDIX B

UNITED STATES of America,
Plaintiff-Appellee,
v.
John M. HAYDEL, Jr., a/k/a "Ice Cream"
and "Mugsy",
Defendant-Appellant.

No. 80-3254

United States Court of Appeals
Fifth Circuit.*
Unit A

Dec. 17, 1981.

Appeal from the United States District Court for the Middle District of Louisiana; John V. Parker, Judge.

ON PETITION FOR REHEARING
AND SUGGESTION FOR
REHEARING EN BANC

(Opinion July 8, 5 Cir., 1981, 649, F.2d 1152).

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*Senior Judge of the United States Court of Claims, sitting by designation.

Before SKELTON**, Senior Judge, RUBIN and REAVLEY, Circuit Judges.

PER CURIAM:

The Opinion is corrected so that the last paragraph before Part I of the opinion reads as follows:

> "Pursuant to a pretrial agreement, five of the remaining counts were dismissed. Haydel stipulated that his trial on four counts would be to the court on the stipulated testimony of five U.S. Special Agents and certain exhibits listed on a stipulated exhibit list, subject to the objections previously raised by Haydel and his motions to suppress. Sitting without a jury, the district court found that Haydel had made a material understatement of his income and that he was guilty of all four counts of violating the applicable tax statute, 26 U.S.C. § 7206(1). Haydel was sentenced to one year on the first count and five years of probation on the remaining three counts."

With this correction, the Petition for Rehearing is DENIED and no member of this panel nor Judge of

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**Senior Judge of the United States Court of Claims, sitting by designation.

this Administrative Unit in regular active service having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is DENIED.